IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 91 of 2005 AND
WRIT APPEAL NO : 432 of 2005

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WRIT APPEAL NO : 91 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/09/2004 in WP No : 13498 of 2004 on the file of the High Court.)

Between:

1. B & S Technical Hands, Bhanur, rep by its Proprietor,
B. Bhujanga Reddy.
2. M. Mahipal Reddy, S/o. M. Ranga Reddy,
Singapuram Village, Shankarpally Mandal,
Ranga Reddy District.

... APPELLANTS

AND

1. Hydropnmaeutic Engineers (Hyd) Pvt. Ltd. New Bakaram,
Hyderabad, rep by its Managing Director
Mr. S.K. Sanghi
2. Bharat Dynamics Limited, Bhanur Unit, Medak District,
Rep by its Chairman and Manging Director

..RESPONDENTS

Counsel for the Appellants: MR.M.SIVANANDA KUMAR

Counsel for the Respondent No.1: MR VEDULA SRINIVAS

Counsel for the Respondent No.2: MR.K.SRINIVASA MURTHY

WRIT APPEAL No : 432 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/09/2004 in WP No : 13498 of 2004 on the file of the High Court.)

Between:

Bharat Dynamics Limited, Bhanur Unit, Medak District,
Rep by its Chairman and Manging Director

... APPELLANT

AND

1. Hydropneumatic Engineers (Hyd) Pvt. Ltd. New Bakaram, Hyderabad, rep by its Managing Director, Mr. S.K. Sanghi

2. B & S Technical Hands, Bhanur, rep by its Proprietor, B. Bhujanga Reddy.

....RESPONDENTS

Counsel for the Appellant: MR.K.SRINIVASA MURTHY

Counsel for the Respondent No.1: MR.VEDULA SRINIVAS

Counsel for the Respondent No.2: MR.M.SIVANANDA KUMAR.

The Court made the following:

COMMON JUDGMENT: (Per BRSR,J)

The first respondent herein filed the writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ of *Mandamus* declaring the action of M/s. Bharat Dynamics Limited (BDL), first respondent therein, in not awarding the contract of operation and maintenance of Plant and Township to the successful tenderers, pursuant to the notification, dated 17.07.2003, as arbitrary and unreasonable. Consequential directions were also sought for as against the Bharat Dynamics Limited not to award the work to the first appellant in W.A.No.91 of 2005, who according to the appellant No.1 has been wrongly described as B&S Technical Hands, Bhanur represented by its Proprietor B.Bhujanga Reddy instead of M.Mahipal Reddy.

There is no dispute whatsoever that the Bharat Dynamics Limited, first respondent in the writ petition, issued tender notice, dated 24.03.1998, inviting tenders for the work of operation and maintenance of water supply systems in

Plant and Township, in response to which the first respondent herein/writ petitioner submitted tenders and the work was allotted to him on yearly basis. The work was renewed in the year 2001. Tenders were once again issued by the notification, dated 17.07.2003, in response to which the first respondent herein/writ petitioner again submitted his tender quoting an amount of Rs.89,100/- per month. According to him, he is the lowest tenderer. He was called for negotiations on 11.06.2004 and during the negotiations he agreed to execute the work at the rate of Rs.86,400/- per month instead of the quoted amount of Rs.89,100/- per month. For whatsoever reason, the work was not awarded. Having learnt that the work was likely to be entrusted to the first appellant in W.A.No.91 of 2005, the writ petition has been filed.

Bharat Dynamics Limited filed a detailed counter affidavit, *inter alia,* opposing the writ petition stating that when the Management offered to pay an amount of Rs.78,000/- per month against the previous contract value of Rs.67,065/-, the writ petitioner, the first respondent herein, declined to accept the offer and that the Committee consisting of Additional General Manager (P&A), Senior Manager (Finance-I) and Assistant Manager (Civil) recommended for cancellation of tender and accordingly, the tender was cancelled.

The learned Judge having adverted to the issues that had fallen for consideration came to the right conclusion that every public authority must enter into contract, keeping in view its own financial interest and the process of inviting tenders or conducting auction must be transparent and subserve public interest by getting maximum benefit to the organization. The learned Judge having arrived at such a conclusion directed the Bharat Dynamics Limited to invite fresh tenders, by giving wide publicity, from all eligible and qualified candidates as per the eligibility criteria that may be fixed by the Chairman and Managing Director.

In Writ Appeal No.91 of 2005, the appellants would submit that the Chairman and Managing Director is clothed with the discretionary power to award contract without calling for tenders and in fact, the Chairman and Managing Director in this case having exercised that power not only cancelled the tenders but also decided to entrust the work to the B&S Technical Hands, who were

earlier working in the company as technocrats. The decision, according to the counsel for the appellants in W.A.91 of 2005 and as well as the learned Standing Counsel for the Bharat Dynamics Limited is not vitiated for any reason whatsoever inasmuch as the award of the contract in favour of the appellants in W.A.No.91 of 2005 is also in public interest.

Sri Vedula Srinivas, learned counsel for the first respondent/writ petitioner contends that no such decision has been taken by the Chairman and Managing Director in the instant case, but he merely approved the move of the Committee consisting of the officers referred to herein above, who recommended for cancellation of tender.

We have given our earnest consideration to the submissions made during the course of hearing of this appeal.

It is unnecessary to go into the question as to whether, in the facts and circumstances, the company could have taken decision to cancel the tenders since the learned Judge did not grant any relief whatsoever to the writ petitioner and issued any directions as prayed for by it for entrusting the work. It is totally unnecessary to go into the validity of the very decision to cancel the tenders since no writ appeal has been preferred by the first respondent herein/writ petitioner challenging that portion of the judgment.

The only question that falls for consideration is whether any decision has been taken by the Chairman and Managing Director in exercise of his discretion for entrusting the work to the appellants in W.A.No.91 of 2005 on nomination basis. The learned Judge having pursued the records found that there are no proceedings of the Chairman and Managing Director recording reasons for awarding the work to the appellants in W.A.No.91 of 2005 without inviting tenders. That a note circulated to the Chairman and Managing Director regarding the decision of the Tender Committee was approved by the said Chairman and Managing Director. The learned Judge came to the right conclusion that the same would not amount to awarding contract without calling for tenders. It is very well settled and needs no restatement at our hands that public interest parameters require every authority and instrumentality of the State to call for the tenders and invite bidders whenever it wants to enter into

contract unless there are good and exceptional reasons for dispensing with such procedure of inviting tenders and entrusting the work on nomination basis. As observed by the learned single Judge, no reasons have been recorded by the Chairman and Managing Director to entrust the work on nomination basis to the appellants in W.A.No.91 of 2005.

The learned single Judge did not commit any error whatsoever in allowing the writ petition to the limited extent directing the Bharat Dynamics Limited to call for fresh tenders. It is needless to observe that if any such fresh tenders are called for, it shall be open to the appellants in W.A.No.91 of 2005 as well as the first respondent herein/writ petitioner and others to participate in the same. We find no reason to interfere with the well-considered order passed by the learned single Judge.

The appeals fail and accordingly shall stand dismissed.

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B. SUDERSHAN REDDY, J.

Date:01/03/2005.

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C.V. RAMULU, J.

GS/KS

To

1. The Chairman and Manging Director,

Bharat Dynamics Limited, Bhanur Unit, Medak District,

2. Two C.D. Copies